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Assistant Commissioner for Patents  
Washington, D.C. 20231

On October 8, 2002

TOWNSEND and TOWNSEND and CREW LLP

By: M. Diane Aubé

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

Paul Chang et al.

Application No.: 09/215,421

Filed: December 18, 1998

For: TELECOMMUNICATIONS  
TRANSMISSION TEST SET

Art Unit: 2663

DECLARATION OF ROBERT KING

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

I, Robert King, hereby declare as follows:

I am presently the Vice President – North American Sales at Sunrise Telecom Incorporated ("Sunrise"), the assignee of the present application. In the fall/winter of 1997, I was the North American Sales Manager. In connection with my duties, I visited Southwestern Bell Telephone Company (SBC) on or about December 11-12, 1997 regarding the SunSet<sup>®</sup> xDSL Test Set. To my knowledge, the xDSL Test Set may have embodied the invention claimed in the present application.

At SBC I met with laboratory technicians who would be evaluating test equipment that SBC may in the future purchase. I displayed a prototype of the xDSL

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Test Set to these technicians; the prototype was serial number 0001, the then only existing prototype.

The xDSL Test Set is a modular test set. At my meeting at SBC, I only displayed the base unit; I did not display any modules. The prototype that I displayed could power on and could perform certain digital multi-meter functions, capacitance, and resistance. The prototype could not perform time domain reflectometry although it did have mocked-up screens to simulate the results of a time domain reflectometry test. The prototype also could not perform line measurements.

At my meeting I used a Power Point presentation that consisted of approximately eleven slides. No press releases, product write-ups, specifications, or product descriptions of the xDSL Test Set were published or otherwise provided to SBC or others.

Before my meeting with the technicians at SBC, I had learned that SBC was beginning to implement DSL service. From my 20 years of experience in the telecommunications industry I knew that shortly after implementing DSL service, SBC would purchase test equipment. I learned from SBC that it intended to issue a Request For Information in the beginning of 1998. I then arranged to meet with the technicians who would study the technical details of proposed test devices to obtain information on their requirements. This was the purpose of my meeting on or about December 11, 1997. The technicians with whom I met were not responsible for purchasing and to my knowledge could not purchase equipment.

No sales were made to SBC at the meetings. No purchase orders were signed, no xDSL Test Sets were left with SBC, and no consideration was exchanged at the meetings. In the meetings, no firm prices were discussed. No firm quantities were discussed. No firm delivery dates were discussed. I understood that at a later time, SBC would solicit information from test equipment manufacturers through a Request For Information. SBC did issue a Request For Information after my visit. I also knew that at an even later date SBC might solicit specific pricing information from Sunrise through a Request for Quotation (RFQ). I understood that even if SBC had in the future sent an

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RFQ to Sunrise, that SBC would not have considered itself to be obligated to accept any quotation that Sunrise would have made in response to the RFQ. I knew that SBC only purchases equipment by issuing a purchase order; I knew that SBC would not accept or consider any offers from Sunrise. I believe that nothing was discussed that would have led SBC to believe that they could have formed a binding contract with Sunrise by simple acceptance. I did not invite SBC to make any offers themselves for the xDSL Test Sets. Even if SBC had made an offer to buy (which they did not), I would have been unable to accept the offer.

The meeting with SBC was private. There was a business custom that any matters discussed in the meetings were to be considered confidential, proprietary, and nondisclosable. I believed that such business custom was in effect. I would not have met with SBC had I not believed that they did not also adhere to such business custom. In my experience, SBC has never breached the confidentiality of such meetings.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 6/30/02

  
Robert King